

**REQUIRING REGISTRATION AND INSPECTION OF
STEAM BOILERS.**

H. B. No. 352.] CHAPTER 436.

An Act to provide for the inspection of steam boilers; defining certain terms; requiring a Certificate of Operation and registration of certain boilers; exempting certain boilers from the provisions of the Act; providing for appointment of an inspector of steam boilers and deputy inspectors; providing every insurance company insuring boilers in this State shall file certain reports showing policies of insurance and inspections with the Commissioner; providing that commissions as inspectors may be issued to certain persons; providing for promulgation of rules and regulations by the Commissioner of Labor covering the inspection and operation of steam boilers; providing for certain hearings; providing for collection of fees for boiler inspection; providing for publication of rules and regulations; providing for penalties for failure to comply with the provisions of this Act and rules enacted pursuant thereto; providing for injunction proceedings after notice; providing for clerical assistants and supplies; fixing salaries; creating a "State Boiler Inspection Fund" and appropriating the monies deposited in said Special Fund to pay the expenses of the administration of said Act; making an appropriation of Twenty Thousand Dollars (\$20,000), or so much thereof as may be necessary, out of the General Fund of the State of Texas for the purpose of paying expenses during the first year of the operation of said Act and providing for the refunding any amount expended out of said Twenty Thousand Dollars (\$20,000) appropriated to the General Fund out of fees collected during the first year of the administration of said law; appropriating any unexpended balance remaining in said Fund at the end of the fiscal year 1937, and appropriating any unexpended balance, not exceeding Ten Thousand Dollars (\$10,000) at the end of the fiscal year 1938, and appropriating any unexpended balance remaining in said Fund at the end of each succeeding fiscal year not to exceed Ten Thousand Dollars (\$10,000) for the purpose of enforcing the Act and providing that balances in excess of said Ten Thousand Dollars (\$10,000) at the end of the fiscal year 1938 shall be transferred and credited from such Special Fund to the General Fund of the State; providing a saving clause; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The following terms as used in this Act shall be construed as follows:

"Commissioner" as used herein shall mean the Commissioner of the Bureau of Labor Statistics of the State of Texas;

"Inspector" as used herein shall mean the inspector of steam boilers appointed under the provisions of this Act;

"Deputy" as used herein shall mean any deputy inspector of boilers appointed under the provisions of this Act;

"Boiler" as used herein shall mean any vessel used for generating steam for power or heating purposes;

"Owner or user" as used herein shall mean any person, firm or corporation owning or operating, or in charge of or in control of any boiler as herein defined;

"Safety device" as used herein shall mean any appurtenance attached to any boiler for the purpose of diminishing the danger of accidents;

"Code of Rules" as used herein shall mean the standard code of rules promulgated and adopted by the Commissioner under the provisions of this Act.

SEC. 2. No steam boiler, unless otherwise specifically exempted in this Act, shall be operated within the State of Texas unless such boiler has been registered with the Bureau of Labor Statistics and there shall have been issued a Certificate of Operation for such boiler, as hereinafter provided for, and such Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner; such Certificate of Operation shall be placed under glass in a conspicuous place on or near the boiler for which it is issued; and no prosecution shall be maintained where the issuance of or the renewal for such Certificate of Operation shall have been requested and shall remain unacted upon; provided, however, if the operation of such boiler without such Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner or the inspector of boilers or any deputy inspector, as hereinafter provided for, shall apply to the District Court in a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of any inspector or deputy inspector that its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

SEC. 3. The following boilers are exempt from the provisions of this Act:

(1) Boilers under Federal control and stationary boilers at roundhouses and pumping stations of railway companies under the supervision and inspection of the Superintendent of Motive Power of such railway companies;

(2) Boilers on which the pressure does not exceed fifteen (15) pounds per square inch;

(3) Automobile boilers and boilers on road motor vehicles;

(4) Boilers used exclusively for agricultural purposes;

(5) Boilers for heating in buildings occupied solely for residence purposes with accommodations not to exceed four families;

(6) Boilers used for cotton gins.

SEC. 4. The Commissioner shall cause to be inspected internally and externally not less frequently than once each twelve (12) months each stationary steam boiler subject to the pro-

visions of this Act. Each portable steam boiler subject to the provisions of this Act shall be inspected externally each time it is moved to a new location, provided that an internal inspection shall be made of each such boiler at least once each (12) months. If such boilers referred to herein are found, upon inspection, to be in a safe condition for operation, a Certificate of Operation shall be issued by the Commissioner for its operation for a period not longer than one year from the date of such inspection. If any inspection authorized hereunder shall show the inspected boiler to be in an unsafe or dangerous condition, the boiler inspector or any deputy may issue a preliminary order requiring such repairs and alterations to be made to such boiler as may be necessary to render it safe for use, and may also order the use of such boiler discontinued until such repairs and alterations are made or such dangerous and unsafe conditions are remedied. Unless such preliminary order be complied with by the owner or user, a hearing before the Commissioner shall be allowed, upon written request, at which the owner or user, making the request, shall have opportunity to appear and show cause why he should not comply with said preliminary order. If it shall thereafter appear to the Commissioner that such boiler is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make said boiler safe, the Commissioner may order or confirm the withholding of the Certificate of Operation for said boiler and may make such requirements as he deems proper for the repair or alteration of said boiler or the correction of such dangerous and unsafe conditions. The inspector in his discretion may issue a temporary Certificate of Operation for not to exceed thirty (30) days, pending the making of replacements or repairs. Nothing in this Section shall be construed to limit the authority of the Commissioner as set forth in Section 6 of this Act. "Certificate of Operation" used in this Section shall mean the "Certificate of Operation" referred to in Section 2 of this Act.

SEC. 5. Every insurance company insuring boilers in this State shall, within thirty (30) days after inspecting any steam boiler, file a duplicate report of such inspection with the Commissioner showing the date of such inspection together with the name of the person making such inspection, and such report shall show fully the condition and location of such boiler at the time such inspection was made. Such report shall also state when the policy of insurance was issued by the insurance company on said boiler and the date of expiration of such policy of insurance.

The owner or user of every boiler inspected by an inspector for an insurance company authorized to do business in this State on which such insurance company has issued a policy of insurance after inspection thereof, shall be exempt from other inspections and inspection fees under the provisions of this Act; provided nothing in this Section shall prevent the Commissioner from authorizing the inspection of any insured boiler at any rea-

sonable time when, in the opinion of the Commissioner, such insured boiler may be in an unsafe condition, provided the Commissioner shall contact the insurance company carrying insurance on said boiler and that the inspector for the insurance company carrying such insurance and the inspector or deputy inspector shall jointly and together inspect the boiler, within twenty (20) days, for which inspection no additional charge shall be made as set forth in Section 12 of this Act. The Commissioner is authorized and has authority to issue a Certificate of Operation to the owner or user of all boilers subject to inspection under this Act, and the owner or user or an insured boiler shall pay the sum of fifty (50) cents for each Certificate of Operation issued, and the owner or user of a State inspected boiler shall pay a like sum of fifty (50) cents for each Certificate of Operation issued, which said fee shall be and is absorbed by the internal and external inspection fee authorized in Section 12 of this Act. Every insurance company shall notify the Commissioner in writing of the cancellation or expiration of every policy of insurance issued by it with reference to boilers in this State, within twenty (20) days after the expiration or cancellation of said policy, giving the cause or reason for such cancellation or expiration. Such notice of cancellation or expiration shall show the date of the policy and the date when the cancellation or expiration has or will become effective.

SEC. 6. The Commissioner is hereby authorized and empowered to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, installation, use, maintenance and operation of steam boilers and appurtenances thereof; including the boiler room; and to require such devices and safeguards and other reasonable means and methods to insure safe operation of steam boilers, including the registration thereof with the Bureau of Labor Statistics.

The Commissioner may exchange information and experience data with the department or other administrative authorities of States having boiler inspection divisions or departments in assembling data for the promulgation of rules and regulations authorized under the provisions of this Act.

Before any rule, regulation or order is promulgated, adopted, enforced, amended, modified or repealed by the Commissioner a public hearing shall be held by him, and not less than ten (10) days before such hearing notice thereof shall be published in at least three (3) newspapers published and having general circulation in the State of Texas, such newspapers to be selected by the Commissioner. After the adoption of rules, regulations and orders by the Commissioner, a complete copy of same shall be published in at least three (3) newspapers, as in the notice of the hearing prior to their adoption, on two (2) different days not more than ten (10) days apart, and within thirty (30) days after the adoption of such rules, regulations and orders; provided that in lieu of publishing in newspapers the rules, regulations and orders by the Commissioner, as stated above, the Com-

missioner may publish and circulate said rules, regulations and orders or the repeal, modification or amendment of any such rule, regulation or order in such form or manner as he may determine; and such rules, regulations and orders shall become effective within ten (10) days after date of notice of adoption thereof or final publication, or at such later time as the Commissioner may, in the rules, regulations and orders, determine. The Commissioner is hereby authorized and empowered, in case of extreme emergency, to promulgate and enforce temporary rules, regulations and orders as he may deem necessary, without publishing the same as hereinabove directed; provided, however, that when such temporary rules, regulations or orders are adopted the same shall not be effective for a period of more than twenty (20) days and no criminal prosecution, as hereinafter provided, shall be had until the provisions of Section 16 of this Act have been complied with.

SEC. 7. When any interested person shall deem himself aggrieved by any fundamental rule, regulation or order promulgated by the Commissioner, he shall notify the Commissioner of such grievance by formal notice in writing, whereupon the Commissioner shall give consideration of such grievance and may modify, change, alter or amend same upon his own motion; upon failure or refusal of the Commissioner, within ten (10) days, to change, alter or modify such fundamental rule, regulation or order, the Commissioner, shall, upon written application for hearing, cause the same to be held within five (5) days thereafter, at which the person complaining shall have opportunity to show cause, if any, why such fundamental rule, regulation or order complained of should be set aside, altered, amended or repealed.

SEC. 8. Within thirty (30) days after the passage of this Act the Commissioner shall appoint a suitable person to be inspector of steam boilers for the State of Texas. Said inspector of steam boilers shall be a resident citizen of Texas for at least five (5) years next preceding to the time of his appointment and shall have had, at the time of such appointment, not less than five (5) years practical experience with steam boilers as a steam engineer, boilermaker or boiler inspector and by examination enable him to judge the safety of boilers for use, and who is neither directly nor indirectly interested in the manufacture, ownership or agency of steam boilers or their appurtenances. It shall be the duty of the Commissioner to appoint one (1) or more deputy inspectors as needed with like qualifications of the inspector of steam boilers, and such clerical assistants as may be necessary to carry out the provisions of this Act.

SEC. 9. The salary of the inspector of steam boilers shall not exceed Three Thousand Dollars (\$3,000) per annum and the salary of each deputy inspector shall not exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, and in addition thereto all inspectors shall be allowed their actual expenses incurred in the performance of their official duties, and for such

equipment as may be deemed necessary by the Commissioner. All expenses incident to carrying out the provisions of this Act shall be paid out of the funds in the State Treasury to the credit of the "State Boiler Inspection Fund" on vouchers or warrants issued and signed by the Commissioner and the Comptroller of Public Accounts. The Commissioner may incur such expense for clerical assistants and office supplies as may be necessary, not exceeding Seven Thousand, Five Hundred Dollars (\$7,500) annually, said sums to be paid by the State Treasurer on warrants drawn by the Comptroller of Public Accounts.

SEC. 10. The Commissioner may cause the inspection provided for in this Act to be made either by the inspector of boilers or any deputy inspector, or by any qualified boiler inspector employed by any county, or city and county, or city, or any insurance company, provided that such persons making inspections (other than the inspector of boilers or deputy inspectors regularly employed by the Commissioner) shall first obtain from the Commissioner a commission as inspector showing his qualifications to make such inspections. The Commissioner is vested with full power and authority to determine the qualifications of any applicant or other person seeking a commission as inspector, by examination. At the discretion of the Commissioner he may accept, after proper investigation by him, the commission issued to an inspector by any other state having an examination equal to that of the State of Texas. The Commissioner may rescind at any time, upon good cause being shown therefor, any commission as inspector issued by him to any person, and he may at any time, upon good cause being shown therefor and after notice and opportunity for hearing thereon, revoke any Certificate of Operation issued for any steam boiler within this State.

SEC. 11. Every inspector receiving a commission as inspector shall forward to the Commissioner on forms furnished the inspector by the Commissioner, within thirty (30) days after an inspection is made, a report of such inspection, in default of which the commission as inspector may be cancelled by the Commissioner.

SEC. 12. The Commissioner shall fix and collect fees for the inspection of steam boilers covered by this Act, not exceeding Two Dollars and Fifty Cents (\$2.50) for each external inspection and not to exceed Seven Dollars and Fifty Cents (\$7.50) for each internal inspection in each twelve-month period. Such fees must be paid by the owner or user before the issuance of a Certificate of Operation for the boiler inspected. No fee shall be charged the owner or user by the Commissioner when the inspection herein provided for has been made by an inspector holding a commission as inspector from said Commissioner if the holder of such commission as inspector is employed by any county, or city and county, or city, or insurance company, except the charge fixed for Certificate of Operation in Section 5 hereof. All fees collected by the Commissioner under this Act shall be paid into the State Treasury to the credit of the "State Boiler

Inspection Fund" together with a detailed report of same, and said monies so deposited in said special fund are hereby appropriated for the purpose of paying the expenses of the administration of this Act.

SEC. 13. Any person, firm, corporation, or agent thereof, owning or having the custody, management, use or operation of any steam boiler in this State, who shall violate any provision of this Act, or who violates any rule, regulation or order promulgated by authority hereof by the Commissioner or any regularly employed inspector authorized to enforce any provision or any rule, regulation or order authorized herein, or any person, firm, corporation, or agent thereof coming within any provision of this Act, or any rule, regulation or order authorized herein, who shall fail or refuse to comply therewith, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be subject to a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

SEC. 14. Any owner, manager, superintendent or other person in charge or in control of any factory, mill, workshop, mine, store, business house, public or private work, or the lessee or operator of same, or the owner or lessee of any mineral estate in land, or any other place where a steam boiler subject to inspection hereunder is located, who shall refuse to allow any official or employee of the Bureau of Labor Statistics to enter the same and remain thereon or therein for such time as is reasonably necessary, or who shall hinder any such official or employee in any way, or who shall in any way prevent or deter him from carrying out the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed One Hundred Dollars (\$100) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

SEC. 15. Whenever there shall have been adopted, after notice and hearing as provided for under this Act, any rule, regulation or order, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commissioner shall have given notice of such rule, regulation or order by publishing a complete copy of same in three (3) newspapers published and having general circulation in the State of Texas, such newspapers to be selected by the Commissioner, once each day for two (2) consecutive days; on and after the fifteenth calendar day following the date of the last publication, such rule, regulation, and order shall be effective and enforceable in any criminal action brought pursuant to this Act. No criminal action shall be maintained against any person involving the violation of any provision or any amendment or modification of any rule, regulation or order of the Commissioner until and unless the said Commissioner

shall have promulgated such amendment or modification after its adoption by publishing a complete copy of such amended rule, regulation or order in three (3) newspapers published and having general circulation in the State of Texas once each day for two (2) consecutive days; on and after the fifteenth calendar day following the date of the last publication, such amendment or modification of such rule, regulation or order shall become effective and enforceable in any criminal action brought pursuant to this Act; provided that in lieu of the publishing in newspapers of rules, regulations, orders, amendments and modifications, as stated above, the Commissioner may publish and circulate said rules, regulations, orders, amendments or modifications in such form or manner as he may determine.

SEC. 16. An affidavit under the Seal of the Commissioner executed by the said Commissioner or the inspector of boilers or any deputy inspector, setting forth the terms of any order of the Commissioner and that it has been adopted, promulgated and published, and was in effect at any date during any period specified in such affidavit, shall be prima facie evidence of all such facts, and such affidavit shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

SEC. 17. The funds collected under the provisions of this Act shall be paid into the State Treasury and kept in a special fund to be known as the "State Boiler Inspection Fund" and shall be paid out for salaries, traveling expenses and other necessary expenses specified in this Act and upon proper account duly approved by the Commissioner.

SEC. 18. There is hereby appropriated out of the General Revenue Fund of the State of Texas the sum of Twenty Thousand Dollars (\$20,000), or so much thereof as may be necessary not otherwise appropriated, for the purposes of carrying out the provisions of this Act; said amount that may be expended out of this appropriation shall be replaced and refunded to the General Revenue Fund by the Commissioner from fees collected under the terms of this Act during the first year of the operation of this Act. However, any monies remaining in said fund at the end of the fiscal year ending August 31, 1937, are re-appropriated to the use of the Commissioner for the purpose of carrying out the provisions of this Act. Any unexpended balance or funds remaining in the "State Boiler Inspection Fund" at the end of the fiscal year ending August 31, 1938, not exceeding Ten Thousand Dollars (\$10,000) is hereby appropriated for the use of the Commissioner to carry out the purposes of this Act, and for each succeeding fiscal year any unexpended balance remaining in the "State Boiler Inspection Fund" not exceeding Ten Thousand Dollars (\$10,000) shall be carried forward for the purpose of the enforcement of this Act, provided, however any amount remaining in said fund in excess of Ten Thousand Dollars (\$10,000) at the end of any fiscal year after 1938 shall revert to the General Revenue Fund of the State of Texas.

SEC. 19. Should any section, subsection, sentence, clause, phrase, provision or exemption of this Act be declared unconstitutional or invalid for any reason such invalidity shall not affect the remaining portions or provisions hereof.

SEC. 20. The fact that we do not have a law in Texas providing for the inspection of steam boilers creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—H. B. No. 352 passed the House, March 3, 1937, by a vote of 116 yeas, 11 nays; passed the Senate, with amendments, April 29, 1937, by a vote of 22 yeas, 4 nays; House refused to concur in Senate amendments, April 30, 1937, and Conference Committee appointed; House adopted Conference Committee report, May 13, 1937, by a vote of 121 yeas, 3 nays; Senate adopted Conference Committee report, May 13, 1937, by a vote of 27 yeas, 1 nay.]

Approved June 3, 1937.
Effective June 3, 1937.

PROVIDING THAT BONDS ISSUED BY CERTAIN ROAD DISTRICTS SHALL PARTICIPATE IN THE STATE HIGHWAY FUNDS.

S. B. No. 195.] CHAPTER 437.

An Act providing that all bonds which have been heretofore issued and sold by road districts, prior to September 17, 1932, in counties having a population of not less than nineteen thousand (19,000) and not more than nineteen thousand five hundred (19,500), according to the 1930 Federal Census, the proceeds of the sale of which bonds have been expended in whole or in part upon a highway which has, since the issuance and sale of said bonds, been designated as a part of the State Highway System, and where the proceeds of the sale of said bonds have been expended, in whole or in part, upon a highway heretofore designated as a part of the State Highway System where not more than twelve (12) miles of such highway lies within the road district issuing said bonds, shall be entitled to participate in the State Highway Funds, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and amendments thereto, as well as re-enactments thereof, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That all bonds which have been heretofore issued and sold by road districts in counties with a population of not less than nineteen thousand (19,000) and not more than nineteen thousand five hundred (19,500), according to the next preceding Federal Census, where the proceeds of the sale of the